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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,864	12/31/2003	Lawrence James Romano III	19647	6318

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EXAMINER

THOMAS, ALEXANDER S

ART UNIT PAPER NUMBER

1772

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,864

Applicant(s)

ROMANO ET AL.

Examiner

Alexander Thomas

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 14/2, 14/3, 15, 16, 17/2, 17/3, 18-24, 25/2, 25/3 and 26-29 is/are rejected.
- 7) ☒ Claim(s) 14/1, 17/1 and 25/1 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/24/04, 5/5/05
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 2-10, 11/2-17/2, 11/3-17/3, 21/2, 21/3, 22, 25/2, 25/3 and 26-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,848,595. Although the conflicting claims are not identical, they are not patentably distinct from each other because the article of the patent inherently possesses the claimed resiliency value and length value set forth in claims 2 and 7. It is clear from Figure 6a of the patent the edge portion therein has a length greater than the length of the main portion. It would inherently have a greater resiliency than the main portion due to its pleated structure which is essentially the same type of structure instantly disclosed in Figure 6a of the application. It would have been obvious to one of ordinary skill in the art to adjust these to values in order to provide the desired ease of gripping the edge portion.

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3. Claims 2-10, 11/2-17/2, 11/3-17/3, 21/2, 21/3, 22, 25/2, 25/3 and 26-29 are directed to an invention not patentably distinct from claims 1-16 of commonly assigned Patent 6,848,595. Specifically, they are not patentably distinct from each other because the article of the patent inherently possesses the claimed resiliency value and length value set forth in claims 2 and 7. It is clear from Figure 6a of the patent the edge portion therein has a length greater than the length of the main portion. It would inherently have a greater resiliency than the main portion due to its pleated structure which is essentially the same type of structure instantly disclosed in Figure 6a of the application. It would have been obvious to one of ordinary skill in the art to adjust these to values in order to provide the desired ease of gripping the edge portion. The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP § 2302). Commonly assigned 6,848,595, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon

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the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications filed on or after November 29, 1999.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 2, 11/2–13/2, 15/2-17/2, 18-20, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by European patent document 857,453. The reference discloses a wet wipe having an embossed leading edge to enhance separation from a stack of wipes; see [0040] and [0043]. The embossed edge is considered to inherently be more resilient than the non-embossed portion of the wipe because of the ridges and valleys created by the embossing.

6. Claims 1, 2-10, 11, 13, 15,16, 21, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Fernald 711,840. See Figure 2 and page 1, lines 25-38. The edge length value of the reference's article appears to be at least 25% greater than the main length value in Figure 2 (claims 7-10). Also, the reference's article would inherently possess the claimed resiliency properties in view of the pleated edges.

Claim Rejections - 35 USC § 103

7. Claims 3-6, 14/2, 11/3-17/3, 25/2-29/2 and 25/3-29/3 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over European patent document 857,453. The reference discloses a wet wipe having an embossed leading edge to enhance separation from a stack of wipes; see [0040] and [0043]. However, it does not disclose the claimed edge resilient value. The edge portion is considered to inherently possess a resilient value greater than that of the main portion in view of the ridges and valleys presence in the edge portion. In any event, it would have been obvious to one of ordinary skill in the art to vary the depth of the ridges and valleys to reduce the coefficient of friction as suggested in the reference ([0041]) which would inherently increase the resiliency of the edge portion.

Claim Objections

8. Claim 13 is objected to because of the following informalities: there is no antecedent basis for the term "the plurality of wipes". Appropriate correction is required.

Specification

9. The disclosure is objected to because of the following informalities: the status of the parent application listed on page 1 of the specification needs to be updated.

Appropriate correction is required.

Allowable Subject Matter

10. Claims 14/1, 17/1 and 25/1 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Thomas whose telephone number is 571-272-1502. The examiner can normally be reached on 6:30-4:00 M-THUR.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



ALEXANDER S. THOMAS
PRIMARY EXAMINER